

**Office of Chief Counsel
Internal Revenue Service
memorandum**

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date: January 5, 2009

to: David R. Williams
Director, Electronic Tax Administration
(Wage & Investment)

from: George J. Blaine
Associate Chief Counsel
(Income Tax & Accounting)

subject: Credit Card Convenience Fees

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

ISSUE

Whether a taxpayer may deduct the convenience fee charged for paying individual income taxes with a credit or debit card.

CONCLUSION

A taxpayer may deduct the convenience fee charged for paying individual income taxes with a credit or debit card, as an ordinary and necessary expense under section 212(3) of the Internal Revenue Code (Code).

BACKGROUND

Credit and debit card companies (and certain processing providers) charge a convenience fee to taxpayers who pay income taxes electronically with a credit or debit card. The credit and debit card companies charge the convenience fees to the taxpayers, because § 6311(d)(2) prohibits the IRS from paying convenience fees for tax payments made through credit and debit cards. The average convenience fee is approximately 2.5% of the tax payment.

PMTA 2009-002

Section 212(3) allows an individual a deduction for ordinary and necessary expenses paid or incurred in a taxable year “. . . in connection with the determination, collection or refund of any tax.” Like traditional filing costs and preparer’s fees, electronic filing fees have been treated as expenses paid in connection with the determination of a taxpayer’s liability deductible under § 212(3). See 2008 IRS Pub. 529 at 8. A Service Center Advice Memorandum, SCA 200115032, concluded that fees for electronic payment of taxes were not deductible under § 212(3) because such fees do not relate to the determination of tax liability. The SCA did not consider whether electronic payment fees might be connected with the collection of tax, another basis for deduction under § 212(3).

We have reconsidered SCA 200115032 and, for the reasons described below, conclude that electronic payment fees are properly deductible as expenses paid in connection with the collection of tax under § 212(3).

ANALYSIS

Section 6311(a) of the Code allows the Secretary to receive payments for taxes by any commercially acceptable means. Section 301.6311-2(a)(1) permits the Secretary to receive tax payments by credit card or debit card, but specifies that the taxpayer’s use of a credit card or debit card to pay taxes must be voluntary. Section 6311(d)(2) authorizes the Secretary to enter into contracts to obtain services related to receiving payment if it is cost-beneficial to the Government, but prohibits the Secretary from paying any fee or providing any other consideration under such contracts for the use of credit, debit or charge cards for the payment of taxes. That is, the Service may not pay convenience fees charged for electronic tax payments. See also § 301.6311-2(f) of the Procedure and Administration Regulations.

Section 212(3) of the Internal Revenue Code permits individuals to deduct ordinary and necessary expenses paid or incurred during the taxable year in connection with the determination, collection, or refund of any tax.

Under § 1.212-1(l) of the Income Tax Regulations, expenses are deductible if paid or incurred by an individual in connection with the determination, collection, or refund of any tax, whether the taxing authority be Federal, State, or municipal, and whether the tax be income, estate, gift, property, or any other tax.

SCA 200115032 concluded that the convenience fees paid by taxpayers in connection with the electronic payment of tax liabilities were not deductible under § 212(3) as expenses paid in connection with the determination of any tax. We generally agree with the SCA that convenience fees are not related to or necessary to the determination of tax liability. However, we think that convenience fees are paid in connection with the collection of tax, an independent basis for deduction under § 212(3).

Section 6311(d)(2) was enacted in response to the increasing use of electronic credit and debit card payments. Section 6311(a), governing the permissible methods of

paying income taxes, was enacted before the emergence of electronic payments. Section 6311(d)(2) specified that the new electronic method of payment was permissible under § 6311(a). The statute's clear purpose was to allow electronic payment as a part of the tax collection process. Therefore, credit card convenience fees are paid in connection with the collection of tax within the meaning of § 212(3).

We conclude that the credit and debit card convenience fees charged for paying individual income tax electronically are expenses paid in connection with the collection of tax. Therefore, those convenience fees are deductible under § 212(3).

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is requested, please contact this office for our views.

Please call Thomas Moffitt at (202) 622-7900 if you have any further questions.

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